In Supreme Court of United States

OCTOBER TERM, 1897.

HIGHLAND AVENUE & BELT RAILROAD COMPANY,
Appellant,
vs.
COLUMBIAN EQUIPMENT COMPANY,
Appellee,
No. 427.

On Certificate from the United States Court of Appeals, for the Fifth Judicial Circuit.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The above named Appellant, the Highland Avenue & Belt Railroad Company, respectfully moves the Court to advance the above entitled cause, and in support of its said motion begs leave to submit the following statement:

The original bill in this cause was filed in the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, and after notice, the Circuit Court appointed a Receiver of the property of moveant, by an order in the following terms:

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Columbian Equipment Company vs. Highland Avenue and Belt Railroad Company, et al.—In Equity.

Upon reading and considering the verified bill in this cause, together with the amendment thereto and the petition of the Columbian Equipment Company, filed on the 6th day of March, 1897, at this term of the Court, for the appointment of a receiver, on the motion of counsel for said petitioner, it is ordered by the Court that the prayer of the petition be granted and that Phillip Campbell, a citizen of Sheffield, Alabama, be and is hereby appointed receiver of this Court of all and singular the property, assets, rights and franchises of the Highland Avenue and Belt Railroad Company, doing business in the City of Birmingham, Alabama, described in the bill of complaint herein, wherever situated, and including all railway tracks, terminal facilities, real estate, warehouses, offices, stations and all other buildings and property of every kind owned, held, possessed or controlled by the said Company, together with all property in connection therewith, and all monies, choses in action, credits, bonds stocks, leasehold interests, operating contracts and other assets of every kind

and all other property, real, personal and mixed, held or possessed by it, to have and to hold the same as the officer of and under the orders and direction of the Court.

The said receiver is hereby authorized and directed to take immediate possession of all and singular the property above described, wherever situated or found and to continue systematically, in the same manner as at present, the business and occupation of carrying passengers and freight and the discharge of all the duties obligatory upon the said Company.

And the said Highland Avenue and Belt Railroad Company and each and every of its officers, directors, agents and employes are hereby required and commanded forthwith to turn over and deliver to such receiver, or his duly constituted representative, any and all notes, accounts, money or other property in his or their hands, or under his or their control.

Said receiver is hereby fully authorized to continue the business and operate the railway of said company and manage all its property at his discretion in such manner as will, in his judgment, produce the most satisfactory results consistent with the discharge of the public duties imposed on said Company, and to collect and receive all income therefrom and all debts due said Company of every kind, and for such purpose he is hereby invested with full power at his discretion to employ and discharge and fix the compensation of all such officers, counsel, managers, agents and employees as may be required for the proper discharge of the duties of his trust.

Said receiver is hereby fully authorized and empowered

to institute and prosecute all such suits as may be necessary in his judgment to the proper protection of the property and trusts vested in him, and likewise defend all actions instituted against him as receiver, and also to appear in and conduct the prosecution or defense of any and all suits or proceedings now pending in any Court against said Company, the prosecution or defense of which will, in the judgment of said receiver, be necessary and proper for the protection of the property and rights placed in his charge, and for the interests of the creditors and stockholders of said Company.

Said receiver is hereby required to give bond in the sum of $10,000, with personal security, or the security of some responsible Guaranty and Indemnity Company, satisfactory to the Clerk of this Court, for the faithful discharge of his duties, and is also required to make and file full reports in this Court quarterly.

And the Court reserves the right by orders hereinafter to be made, to direct and control the payments of all supplies, materials and other claims, and in all respects to regulate and control the conduct of said receiver.

JOHN BRUCE, Judge.

April 5, 1897.

Endorsed—Filed in open Court this April 5, 1897.

N. W. TRIMBLE, Clerk.

That from this order, moveant prayed for and was allowed an appeal to the Circuit Court of Appeals for the Fifth Circuit, and said appeal was perfected and the cause duly docketed in said Court of Appeals. That the said appeal

was prayed for and allowed under the provisions of Section 7, of the Act of Congress approved March 3, 1891, as amended by the Act of Congress approved February 18, 1895.

On this appeal, the cause came on for hearing, when a motion was duly made by appellee to dismiss the appeal on the ground that the Circuit Court of Appeals for the Fifth Circuit, was without jurisdiction to entertain the appeal, because the order appealed from did not grant an injunction, or was not equivalent to an order granting an injunction, and that, the decree appointing a receiver being interlocutory and not final, was not susceptible of being appealed from.

And thereupon the said Circuit Court of Appeals, of its own motion, under the provisions of the Act of Congress, has certified to this Honorable Court the question "was the decree appointing Campbell receiver, above referred to, susceptible of being appealed from on the ground that the said order embraced within its terms an injunction, or the necessary equivalent of an injunction."

Moveant further shows unto your Honors that the question presented by the record is one of great importance to suitors generally and involves the jurisdiction of the Circuit Court of Appeals; that the same was certified to this Honorable Court without any action or motion on the part of moveant, and moveant shows unto your Honors that by the terms of the Act of Congress it is provided that such appeal "shall take precedence in the appellate court."

And moveant further shows unto your Honors that since said question was so certified, the Circuit Court of the United States, has, on the application of the appellee, made an order suspending all action in the cause by moveant in the said Circuit Court, until said appeal is determined.

Moveant further shows unto your Honors that pursuant to the terms of said order appointing said Campbell, as Receiver of its property, moveant has delivered possession of all of its property to said receiver, and though moveant has requested the Circuit Court to pass upon and determine the equities of the bill in said cause, upon demurrer to the bill as amended, said Circuit Court has declined, and still declines to do so.

Wherefore, moveant respectfully prays your Honors to advance said cause for hearing, or to permit said cause to be submitted for decision on printed briefs.

Samuel A. Putnam
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Attorneys for Motion.